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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 MACLEAN TOWNHOMES, LLC, a  
11 Washington limited liability company, as  
12 assignee of American Heritage Builders, a  
Washington corporation,

13 Plaintiff,

14 v.

15 CHARTER OAK FIRE INSURANCE  
CO., a foreign insurance company,

16 Defendant.

CASE NO. C06-1093BHS

ORDER DECLINING TO  
CONSIDER PLAINTIFF'S  
MOTION FOR ENTRY OF  
FINAL JUDGMENT

17 This matter comes before the Court on Plaintiff's Motion for Entry of Final  
18 Judgment. Dkt. 375. The Court has considered the pleadings filed in support of and in  
19 opposition to the motion and the remainder of the file and hereby declines to consider  
20 Plaintiff's motion for the reason stated herein.

21 **I. PROCEDURAL AND FACTUAL BACKGROUND**

22 On August 3, 2006, Plaintiff MacLean Townhomes Inc. filed a complaint for  
23 declaratory relief and monetary damages against Defendant Charter Oak Fire Insurance  
24 Co. Dkt. 1.

25 On June 3, 2008, Plaintiff filed a Motion for Summary Judgment Regarding  
26 Entitlement to Prejudgment Interest. Dtk. 111. On July 11, 2008, the Court granted  
27 Plaintiff's motion and specifically stated that:  
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1 To the extent that Plaintiff obtains a recovery in this case on its claim for  
2 indemnity coverage against Defendant, it is entitled to interest on that  
amount calculated from March 3, 2005.

3 Dkt. 150 at 6.

4 The case proceeded to a bench trial on Plaintiff's claims for coverage and bad  
5 faith. On November 24, 2008, the Court entered final judgment against Charter Oak in  
6 the amount of \$202,955.80.

7 On December 23, 2008, Defendant filed a Notice of Appeal. Dkt. 339. On  
8 January 5, 2009, Plaintiff filed a Notice of Cross Appeal. Dkt. 345.

9 On June 4, 2009, Plaintiff filed a Motion for Entry of Final Judgment. Dkt. 375.  
10 On June 15, 2009, Defendant responded. Dkt. 376. On June 16, 2009, Plaintiff replied.  
11 Dkt. 377.

## 12 II. DISCUSSION

13 The filing of a notice of appeal divests the district court of jurisdiction. *Scott v.*  
14 *Younger*, 739 F.2d 1464, 1466 (9th Cir.1984) (citing *Long v. Bureau of Economic*  
15 *Analysis*, 646 F.2d 1310 (9th Cir.), *judgment vacated on other grounds*, 454 U.S. 934,  
16 102 S. Ct. 468, 70 L. Ed. 2d 242 (1981); *Smith v. Lujan*, 588 F.2d 1304 (9th Cir. 1979)).

17 In this case, the parties have filed notices of appeal of the Court's final judgment.  
18 Therefore, the Court is divested of jurisdiction over this action and declines to consider  
19 Plaintiff's motion.

20 However, since the Court by oversight omitted making a calculation for a sum  
21 certain based upon the July 11, 2008 and the November 24, 2008 judgments, Plaintiff or  
22 Defendant may apply for the appellate court's leave for this Court to correct a clerical  
23 mistake, oversight or omission in the final judgment. *See* Fed. R. Civ. P. 60(a).

1 **III. ORDER**

2 Therefore, it is hereby

3 **ORDERED** that the Court **DECLINES TO CONSIDER** Plaintiff's Motion for  
4 Entry of Final Judgment (Dkt. 375).

5 DATED this 1<sup>st</sup> day of July, 2009.

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9 BENJAMIN H. SETTLE  
10 United States District Judge  
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